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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/720,523   | 05/02/2001  | Rudolf Ritter        | 236088US6 PCT       | 1568             |
| 22850  | 7590        | 10/15/2008           |                     |                  |
| OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| FADOK, MARK A  |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
| 3625   |             |                      |                     |                  |
| NOTIFICATION DATE  |             | DELIVERY MODE        |                     |                  |
| 10/15/2008   |             | ELECTRONIC           |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

## Application No.

09/720,523

## Applicant(s)

RITTER, RUDOLF

## Examiner

MARK FADOK

## Art Unit

3625

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-47 is/are pending in the application.
- 4a) Of the above claim(s) 21, 22, 26-31, 34 and 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-25, 32, 33, 35 and 39-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

The examiner is in receipt of applicant's response to office action mailed 3/20/2008, which was received 6/20/2008. Acknowledgement is made that no amendment was provide. The examiner has carefully considered applicant's remarks and does not find them persuasive. Therefore the previous office action modified for clarity is provided below:

**Examiner's Note**

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 23,25,32,33,34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ali-Vehmas et al (US 6,035,189) in view of Morrill, Jr (US 5,991,749), in view of Sehr (6,999,936) and further in view of Official Notice.**

**In regards to claim 32**, Ali-Vehmas discloses a method for selling products over a mobile radio network, the mobile radio network including a plurality of participants and being coupled to a sales module, comprising:

Ali-Vehmas teaches storing offers at a central location (col 5, lines 15-35), and providing information such as product and quantity information (col 7, lines 25-27).

transmitting via a transmission channel an offer to the plurality of participants in of the mobile radio network (col 7, lines 15-30);

receiving an order data in the sales module from a participant of the plurality of participants via the mobile radio network in response to the transmitting of the offer, the order data including a request for a product of the specified products and an identification of the participant (It is clear that Ali-Vehmas teaches receiving such a request and then passes it along to the vendor, col 5, lines 60-65);

confirming by the sales module that the limited available number of the specified products is greater than zero (the sales module once again processes this information and transmits it through to the user col 7, lines 25 and 26);

Ali-Vehmas teaches the use of an intelligent cell phone to communicate reservation of products such as event tickets and a means for payment of such services or products, but does not specifically mention that a token exchangeable for the product is forwarded to both the vendor and the participant. Morrill teaches an order and payment

process that sends a confirmation including an authorization code that consummates the sale purchase of goods or services (FIG 1A-1E). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ali-Vehmas a token exchangeable for the product is forwarded to both the vendor and the participant, because this will assure that the transaction has been properly authorized and completion of the transaction is confirmed (Morrill, col 1, lines 55-60).

The combination of Ali-Vehmas and Morrill, Jr. teach arriving at a sold out condition and delivering an electronic voucher to a cell phone, but does not specifically mention adjusting the quantity information in the sales module based on the token. Sehr teaches reducing the availability of seating based on the distribution of an electronic ticket (col 8, lines 30-60). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in the combination of Ali-Vehmas and Morrill, Jr. reducing the availability of seating based on the distribution of an electronic ticket as taught by Sehr, because this would keep track of the sales and assure that a seat that is reserved is not given to another, thus minimizing frustration of the consumer arriving at a venue to find someone else in the seat.

In regards to the feature, "the sales module functioning as a distinct central entity from the vendor", the examiner takes Official Notice that it was well known in the art to sell tickets from an entity that is separate from the operator of a venue where tickets may be purchased. Sando is one such example where an entity distinct from the operator of a venue sells tickets from an operator such as Ticket Master. It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ali-

Vehmas, Morrill, Jr and Sehr, selling a venue's tickets from a entity that is distinct from the operator of a venue, because this will increase the marketing and availability of tickets to the public by utilizing existing sales channels and thus increase sales without having to increase in house support staff.

**In regards to claim 23**, the combination of Ali-Vehmas and Morrill, Sehr and Sando teach wherein the order data includes a requested quantity of the products (col 5, lines 65-67).

**In regards to claim 25**, the combination of Ali-Vehmas and Morrill, Sehr and Sando teach wherein the token includes a delivery number (Morrill, FIG 1E).

**In regards to claim 33 and 34**, the combination of Ali-Vehmas and Morrill, Sehr and Sando teach wherein the product includes at least one of goods and services (col 5, lines 64-67).

**In regards to claim 35**, the combination of Ali-Vehmas and Morrill, Sehr and Sando teach wherein, the text messaging protocol is a SMS protocol, the broadcasting includes transmitting the offer information in multiple SMS short messages to the plurality of participants, and the transmitting of the token to the participant includes transmitting the token in a SMS short message to a mobile communications device of the participant (col 7, lines 5-35).

Claims 39-47 are considered parallel claims to the claims supra and are rejected for the same Rationale.

### ***Response to Arguments***

Applicant's arguments with respect to claims 23,24,25,32,33,35,39-47 have been considered but were not found to be persuasive.

Applicant argues that the combination of Ali-Vehmas, Morrill Sehr and Official Notice does not teach "the storing of multiple offers in a sales module that is a distinct central entity from multiple vendors, the offer including quantity information indicating a limited available number of a specific product, and the transmitting of an offer with the limited available number to the recipient."

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., transmitting an offer with the limited available number to the recipient) is not recited in claim 32. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the combination of Ali-Vehmas, Morrill, Sehr and Official Notice does not store an amount of seats available at the respective theaters in the sales module. The examiner points out that the sales module is software per se and cannot therefore be an entity or a distinct entity by itself. Per applicant's specification the software regarded as the sales module does not include a database so the information cannot be stored in the sales module. The examiner next goes to the specification to

determine what structure is available for the software. Page 7, lines 1-10 indicates that the database is separate from the sales module and the "database may be installed by one skilled in the art on the same computer or on another computer accessible to the sales module." Since the software module may be achieved on different computers in a "distributed manner" where a the database is accessible by sales module, clearly Sehr teaches this methodology where the data concerning quantities is stored in a central distributed manner where the most up to date information is available anytime and anywhere to all applications including a sales module (col 1, line 55 – col 2, line 2, col 4, line 61 – col 5, line 13, col 8, lines 30-47 and col 10, lines 1-20).

Applicant argues that there is no distinct sales module functioning as a separate entity in Ali-Vehmas. The examiner concurs and directs applicant to the examiner's use of Official Notice that it was well known in the art to sell tickets from an entity that is separate (distinct) from the operator of a venue (vendor) where tickets may be purchased. Sando was given as an example of a entity operating separately from the vendors. To further clarify this old and well known feature, Wicks is offered as additional support for the examiner's contention that it was old and well known for "the sales module to function as a distinct central entity from the multiple vendors." (See Wicks col 4, lines 27-32).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208



USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeff Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

*Alexandria, Va. 22313-1450*

or faxed to:

**571-273-8300** [Official communications; including  
After Final communications labeled  
"Box AF"]

For general questions the receptionist can be reached at  
**571.272.3600**

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/Mark Fadok/  
Primary Examiner, Art Unit 3625

